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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:
TURNBERRY/MGM GRAND TOWERS, LLC,

☒ Affects this Debtor.

Case No.: 15-13706-abl
Chapter 11

**JOINTLY ADMINISTERED UNDER
CASE NO.: 15-13706-abl**

In re :
TURNBERRY/MGM GRAND TOWER B, LLC,

☒ Affects this Debtor.

Case No.: 15-13708-abl
Chapter 11

In re :
TURNBERRY/MGM GRAND TOWER C, LLC,
☒ Affects this Debtor.

Case No.: 15-13709-abl
Chapter 11

Date: August 3, 2015
Time: 1:30 p.m.

**MOTION FOR ADMINISTRATIVE ORDER ESTABLISHING
PROCEDURES FOR INTERIM COMPENSATION OF ESTATE PROFESSIONALS**

Turnberry/MGM Grand Towers, LLC, a Nevada limited liability company,
Turnberry/MGM Grand Tower B, LLC, a Nevada limited liability company, and
Turnberry/MGM Grand Tower C, LLC, a Nevada limited liability company (collectively, the
“Debtors”), debtors-in-possession, hereby move for entry of an order, substantially in the form

1 attached hereto as **Exhibit “1,”** pursuant to Sections¹ 105 and 331, establishing a procedure for
 2 payment of interim compensation and reimbursement of expenses of the professionals duly-
 3 retained by the Debtors pursuant to Sections 327 or 328 (the “Motion”).

4 This Motion is made and based upon the points and authorities provided herein, the
 5 declaration of Dr. Kenneth W. Wiles filed at ECF No. 23 (the “Wiles Declaration”), and the
 6 declaration of Talitha Gray Kozlowski filed concurrently herewith (the “Kozlowski
 7 Declaration”), as well as the papers and pleadings on file herein, judicial notice of which is
 8 respectfully requested, and any argument of counsel entertained by the Court at the time of the
 9 hearing of the Motion.

10 MEMORANDUM OF POINTS AND AUTHORITIES

11 I. 12 INTRODUCTION

13 1. On June 26, 2015 (the “Petition Date”), the Debtors filed their voluntary petitions
 14 for relief under Chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned
 15 bankruptcy cases (the “Chapter 11 Cases”).

16 2. The Debtors continues to operate their businesses as debtors and debtors-in-
 17 possession pursuant to Sections 1107(a) and 1108.

18 3. No request has been made for the appointment of a trustee or examiner, and no
 19 official committees have been appointed in this Chapter 11 Case.

20 II. 21 JURISDICTION AND VENUE

22 4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
 23 1134. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

24 5. The basis for the relief sought herein arises from Sections 327, 328, 1107, and
 25 1108 of the Bankruptcy Code and Bankruptcy Rule 2014.

26
 27 ¹ All references to “Section” herein shall be to the “Bankruptcy Code” appearing in Title 11 of the U.S. Code; all
 28 references to a “Bankruptcy Rule” shall be to the Federal Rules of Bankruptcy Procedure; and all references to a
 “Local Rule” shall be to the Local Rules of Bankruptcy Practice of the U.S. District Court for the District of Nevada.

are referred to herein as “Debtors’ Professionals” and individually as a “Professional.” See Kozlowski Declaration ¶ 3.

12. By this Motion, the Debtors requests entry of an order authorizing and establishing procedures for interim compensation and reimbursement of expenses of Debtors’ Professionals on a monthly basis, comparable to those procedures established in other Chapter 11 cases filed in this District and before other bankruptcy courts.

13. These Chapter 11 Cases have and will continue to require a meaningful volume of professional work. As a result, the accrual of fees will unduly burden Debtors’ Professionals if they are unable to receive regular compensation for their rendered services. See id. ¶ 4.

14. As such, the Debtors proposes that the Debtors’ Professionals be required to adhere to the procedures set forth herein for compensation and approval of their fees. The Debtors further proposes that all other persons seeking compensation pursuant to Section 503(b) of the Bankruptcy Code be required to adhere to the procedures set forth herein for compensation and approval of their fees.

IV. **PROPOSED PROCEDURES**

15. Debtor proposes that the monthly payment of compensation and reimbursement of expenses of Debtors’ Professionals be structured as follows:

(a) On or before the 15th day of each month following the month for which compensation is sought, Debtors’ Professionals will submit, via e-mail, a monthly statement (the “Statement”) to the Debtors, c/o Dr. Kenneth W. Wiles (ken.wiles@andarepartners.com); Debtors’ bankruptcy counsel, c/o Gregory E. Garman, Esq. (ggarman@gtg.legal), and Teresa M. Pilatowicz, Esq. (tpilatowicz@gtg.legal); the Office of the United States Trustee for the District of Nevada, Las Vegas (Athanasios.Agelakopoulos@usdoj.gov and Brian.Goldberg@usdoj.gov); counsel to any official committee(s) established, if ever, pursuant to Section 1102 of the Bankruptcy Code; and such other persons or entities as ordered by the Court (each, a “Reviewing Party,” and collectively, the “Reviewing Parties”). Each such Statement shall contain a detailed itemization of fees and costs as required by the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under Section 330. Each Reviewing Party will have 10 days after receipt of a Statement to review it. At the expiration of this 10-day review period, the Debtors will promptly pay 85% of the fees and all of the disbursements requested in such Statement, except such fees or disbursements as to which an objection has been served by a Reviewing Party as provided in subparagraph (b) below.

(b) If a Reviewing Party objects to the compensation or reimbursement sought in a Statement, the objecting party shall, within 10 days of the receipt of the Statement, serve via e-mail upon all other Reviewing Parties a written "Notice of Objection to Fee Statement" (the "Objection Notice") setting forth the precise nature of the objection and amount at issue. Thereafter, the objecting party and the Professional whose Statement is the subject of an Objection Notice shall attempt to reach a resolution. If the parties are unable to reach an agreement on the objection within 7 days after receipt of such objection, the Professional whose Statement is objected to shall have the option: (i) filing the Objection Notice with the Court, together with a request for payment of the disputed amount, or (ii) foregoing payment of the disputed amount until the next interim fee application hearing, at which time the Court will consider and dispose of the issue if payment of the disputed amount is requested. The Debtors will be required to pay any portion of the fees and disbursements requested that are not the subject of an Objection Notice promptly.

(c) If these procedures are approved, the Professionals would be required to submit their first Statement on or before August 15, 2015. This Statement would cover the period from June 26, 2015 through July 31, 2015.

(d) After the first 120 days after the Petition Date, and at approximately 120-day intervals thereafter, each Professionals shall file with the Court and serve on the other Reviewing Parties, and any other party who requested special notice in the Chapter 11 Cases, an application pursuant to Section 331 for interim Court approval and allowance of the compensation and reimbursement of expenses requested for the prior 120 days. Any Professional who fails to file an application when due shall be ineligible to receive further interim payment of fees and expenses as provided herein until such time as the application is submitted.

(e) The pendency of an objection to payment of compensation or reimbursement of expenses shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above.

(f) Neither the payment of, nor the failure to pay, in whole or in part, monthly interim compensation and reimbursement as provided herein shall bind any party-in-interest or the Court with respect to the allowance of applications for compensation and reimbursement of Professionals.

16. The Debtors also requests that all other claimants making a claim or potentially making a claim under Section 503 be required to deliver by the 10th day of each month following the rendition of services for which compensation is sought a monthly Statement to the Reviewing Parties, and that all such Statements be kept in accordance with the timekeeping and billing guidelines established by the Court and the office of the United States Trustee.

17. Nothing contained herein, or any payment made under the proposed procedures herein, is intended or shall be construed as (i) an admission as to the validity of any claim against

1 the Debtors, (ii) a waiver of the Debtors' or any party-in-interest's rights to dispute any claim, or
 2 (iii) an approval or assumption of any agreement, contract, program, policy, or lease under
 3 Section 365.

4 **V.**
 5 **LEGAL ARGUMENT**

6 The authority for establishing procedures for the interim compensation and
 7 reimbursement of the Professionals is found within Section 331, which provides, in relevant part:

8 [a] trustee, an examiner, a debtor's attorney, or any Professional person
 9 employed under section 327 or 1103 of this title may apply to the court not
 10 more than once every 120 days after an order for relief in a case under this
 11 title, or more often if the court permits, for such compensation for services
 rendered before the date of such an application or reimbursement for
 expenses incurred before such date as is provided under section 330 of this
 title.

12 11 U.S.C. § 331. Further, Section 105(a) provides that "[t]he Court may issue any order, process,
 13 or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §
 14 105(a).

15 The underlying purpose of Section 331 is to provide financial relief to court-approved
 16 professionals engaged in bankruptcy cases so that the professionals do not have to wait for what
 17 may be years before receiving compensation. See In re Knudsen Corp., 84 B.R. 668, 672 (B.A.P.
 18 9th Cir. 1988) (" . . . when counsel must wait an extended period for payment, counsel is
 19 essentially compelled to finance the reorganization. This result is improper and may discourage
 20 qualified practitioners from participating in bankruptcy cases; a result that is clearly contrary to
 21 Congressional intent.") (citation omitted); In re Commercial Consortium of Ca., 135 B.R. 120,
 22 123 (Bankr. C.D.Cal. 1991) (finding that the general function of Section 331 was to relieve
 23 professionals from the burden of "financing" lengthy bankruptcy proceedings).

24 Courts in this district have regularly entered orders approving professional compensation
 25 procedures that provide for interim compensation and expense reimbursement on a monthly
 26 basis, such as those proposed herein. See In re Lake at Las Vegas Joint Venture, LLC, Case No.
 27 08-17814 (Bankr. D. Nev. 2008); In re USA Commercial Mortgage Company, Case No. 06-
 28

1 10725 (Bankr. D. Nev. 2006); In re Hawaiian Airlines, Inc., Case No. 03-00817 (Bankr. D.Nev.
 2 2006); In re Station Casinos, Inc., Case No. 09-52477 (Bankr. D. Nev. 2009); In re Shengdatech,
 3 Inc., Case No. 11-52649 (Bankr. D. Nev. 2011); In re Zante, Inc., et al., Case No. 09-50746-
 4 GWZ.

5 While interim compensation orders have become standard practice in large cases, as
 6 indicated above, nothing in the Bankruptcy Code prohibits the use of interim compensation
 7 procedures in smaller cases or by smaller firms. See In re Truong, 259 B.R. 264, 267 (Bankr.
 8 D.N.J. 2001) (“to the extent that the *Knudsen* criteria limits its applicability to large cases where
 9 waiting an extended period for payment creates hardship, the test is too restrictive for the broad
 10 range of retention terms permitted by Code § 328, which is restricted only by the reasonableness
 11 of the retention terms proposed by the applicant”); In re Jefferson Bus. Ctr. Assocs., 135 B.R.
 12 676 (Bankr. D.Colo. 1992) (noting that although post-petition retainers and the ability to draw
 13 against such retainers are granted in large bankruptcy cases, usually to large law firms, smaller
 14 law firms should not be treated any differently because “[a] smaller law firm can and often does
 15 face the same, or perhaps greater, burdens, costs, inconvenience, and financial strain, as does a
 16 larger firm if it is unable to receive a retainer.”); see also In re SNTech, Inc., 14-17914-EPB,
 17 ECF No. 159 (Bankr. D. Ariz.); In re Access Insurance Services, Inc., Case No. 11-52830, ECF
 18 No. 213 (Bankr. D. Nev.); In re HMA Sales, 07-12694-LBR, ECF No. 130 (Bankr. D. Nev.); In
 19 re Tree Moss Partners, LLC, 06-13758-LBR, ECF No. 242 (Bankr. D. Nev.).

20 Here, the procedure requested would require interim fee applications to be filed regularly,
 21 which ensures that the Court will fulfill its duty to examine Debtors’ Professionals’ fees, and
 22 would allow payment on a monthly basis upon the service of monthly billing statements and an
 23 opportunity for objection, which ensures that other parties-in-interest are able to effectively
 24 monitor Debtors’ Professionals’ fees.

25 VI. 26 CONCLUSION

27 WHEREFORE, the Debtors respectfully request entry of an order in substantially the
 28 form attached hereto as **Exhibit “1,”** establishing a procedure for payment of interim

1 compensation and reimbursement of expenses of Debtors' Professionals. The Debtors further
2 requests such other and further relief as is just and proper.

3 DATED this 7th day of July, 2015.

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5
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7 By: /s/ Talitha Gray Kozlowski
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